

HOUSE No. 4060

Text of an amendment to the Senate Bill providing responsible reforms in the pension system (Senate, No. 2026) as recommended by the committee on Ways and Means (House, No. 4054), as changed by the House committee on Bills in the Third Reading, and as amended and adopted by the House. April 13 and 14, 2009.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

Striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION 1. Section 1 of chapter 32 of the General Laws is hereby amended by
2 inserting after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition
3 the following words:- through June 30, 2009.

4 SECTION 2. Said section 1 of said chapter 32 of the General Laws, as so
5 appearing, is hereby further amended by striking out, in line 433, the word “term.” And
6 inserting in place thereof the following words:-

7 “Regular compensation” during any period subsequent to June 30, 2009
8 compensation received exclusively as wages by an employee for services performed in
9 the course of employment for his employer.

10 SECTION 3. Said section 1 of said chapter 32 of the General Laws, as so
11 appearing, is hereby further amended by inserting at the end thereof the following
12 definition:-

13 “Wages” the base salary or other base compensation of an employee paid to that
14 employee for employment by an employer. The term wages shall not include, without
15 limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts
16 derived from any salary enhancements or salary augmentation plans which will recur for
17 a limited or definite term, indirect, in-kind or any payments for such items as housing,
18 lodging, travel, clothing allowance, annuities, welfare benefits, lump sum buyouts for

workers' compensation benefits pursuant to section 111F of chapter 41, workers' compensation benefits, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of or for unused vacation or sick leave, or the payment for termination, severance, dismissal, or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen, money paid for holidays shall be regarded as regular compensation, any amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition or any other fringe benefits, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, shall not, regardless of federal taxability, be considered regular compensation.

SECTION 4. Section 4 of said chapter 32 is hereby amended by striking out, in lines 5 to 7, inclusive, as so appearing, the words “, that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further”.

SECTION 5. Subdivision (1) of said section 4 of said chapter 32, as so appearing, is hereby amended by striking out paragraphs (o) and (o½) and inserting in place thereof the following paragraph:-

(o) The service of any state, county or municipal employee first employed in a position receiving compensation of less than \$5,000 shall not constitute creditable service for purposes of this chapter.

SECTION 6. Subdivision (2) of section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-

(e) A person who has been a member of 2 or more systems, and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently, shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; and provided, further, that, notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member.

SECTION 7. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 68 to 73, inclusive, the words “annual rate of his regular compensation on the date such injury was sustained or such hazard was undergone, or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater” and inserting in place thereof the following words:- average annual rate of his regular compensation for the 12 month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective.

61 SECTION 8. Said section 7 of said chapter 32, as so appearing, is hereby further
62 amended by striking out, in lines 131 to 133, inclusive, the words “the greater of the
63 annual rate of his regular compensation on the date such injury was sustained or such
64 hazard was undergone, and”.

65 SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended
66 by striking out, in line 4, the words “or fails of nomination or re-election,”.

67 SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby
68 further amended by striking out, in lines 7 to 9, inclusive, the words “, or fails of
69 nomination or re-election, or fails to become a candidate for nomination or re-election”.

70 SECTION 10A. Section 5(1)(m) of Chapter 32 of the General Laws is hereby
71 amended by striking the words “except for elected officials subject to the provisions of
72 paragraph (b) of subdivision (2) of section ten.

73 SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby
74 further amended by striking out, in lines 50 and 51, the words “fails of nomination or re-
75 election, or”.

76 SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby
77 further amended by striking out, in lines 72 to 77, inclusive, the words “one of the
78 following circumstances applies: (1) that the employee has failed of nomination or re-
79 election, (2) that the employee has failed of reappointment, (3) that the employee’s office
80 or position has been abolished, or (4) that the employee has been removed or discharged
81 from his position without moral turpitude on his part” and inserting in place thereof the
82 following words:- : (1) the employee has failed of reappointment, (2) the employee’s
83 office or position has been abolished, or (3) the employee has been removed or
84 discharged from his position without moral turpitude on his part”.

85 SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby
86 further amended by striking out, in line 79, the word “six” and inserting in place thereof
87 the following figure:- 10.

88 SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing,
89 is hereby amended by adding the following paragraph:-

90 (d) If a member is entitled to a return of his accumulated total deductions and requests
91 such a return from the board on the proscribed form, prior to the return of such
92 accumulated total deductions, the board shall contact such member’s employer to
93 determine whether such member owes an obligation to the employer under the terms of
94 any employee benefit plan, including a cafeteria plan established pursuant to section 125
95 of Title 26 of the United States Code. If it is determined that the member owes the
96 employer under the terms of any such plan, the board shall not return the accumulated
97 total deductions until it has received notice from the employer that the obligation has
98 been satisfied.

99 SECTION 15. Said chapter 32 is hereby further amended by inserting after
100 section 12C the following section:-

101 Section 12D. Any retirement system subject to this chapter shall pay all benefits
102 in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code
103 and the regulations in effect under that section, as applicable to a governmental plan as
104 defined in section 414(d) of the Internal Revenue Code.

105 SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in
106 the 2006 Official Edition, is hereby amended by adding the following paragraph:-

107 (c) A retirement board may require any member entitled to receive a retirement
108 allowance to designate a financial institution to which shall be directly deposited any
109 payments under any annuity, pension or retirement allowance.

110 SECTION 17. Section 19A of said chapter 32, as so appearing, is hereby
111 amended by striking out the first paragraph and inserting in its place the following
112 paragraph:-

113 Any employee of the commonwealth, a city, town, district or other member unit
114 of a retirement system who is retired under this chapter shall, upon the request of the
115 retiring authority paying such pension or retirement allowance, or otherwise may, by
116 assignment made in writing authorize the retiring authority paying such pension or
117 retirement allowance to withhold each month such amount as he may designate for the
118 payment of subscriber premiums applicable to any hospitalization, medical or surgical
119 insurance in effect with a non-profit hospital and medical service corporation or
120 insurance company at the time of his retirement. In the event that the amount of a
121 retiree's pension check is insufficient to accommodate the entire deduction and upon
122 notice from the retirement board, the employer for whom the retiree last worked and from
123 whom he is retired shall bill the retiree for the employee share of the premiums.

124 SECTION 18. Subdivision (5) of section 20 of said chapter 32, as so appearing,
125 is hereby amended by adding the following paragraph:-

126 (m) A retirement board may create, designate, or approve agencies or
127 instrumentalities to provide members with information about retirement planning and
128 options and to provide retirees with information about benefits and to do all other things
129 necessary and desirable to support the purposes of the retirement system.

130 SECTION 19. Chapter 32 of the General Laws, as appearing in the 2006 Official
131 Edition, is hereby amended by inserting after section 22D the following new section:-

132 Section 22E. (a) For the purposes of this section, a statutory adjustment to the
133 commonwealth pension liability is one that changes the benefits or contributions of
134 classes of members, including but not limited to early retirement incentive programs,
135 cost-of-living adjustments, the membership of said classes, or any amendments to chapter
136 32 that may change the actuarial liability of the commonwealth pension system.

137 (b) Joint committees of the general court and the house and senate committees
138 on ways and means when reporting favorably on legislation referred to them which
139 creates a statutory adjustment to the commonwealth pension liability shall include a

review, evaluation and financial impact conducted by the actuary of the public employee retirement administration commission pursuant to this section.

Upon request of a joint standing committee of the general court having jurisdiction or the committee on ways and means of either branch, the actuary of the public employee retirement administration commission shall conduct and prepare a review, evaluation and financial impact of the statutory adjustment to the commonwealth pension liability, in consultation with other relevant state agencies, and shall report to the committee within 90 days of the request.

SECTION 19A. Section 91 of said chapter 32 of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the words ‘or district’ and inserting in place thereof the following words:- , district or authority.

SECTION 19B. Said section 91 of said chapter 32 of the General Laws, as so appearing, is hereby further amended by inserting, in line 84, after the word ‘authority’ the words:- including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, city, town, district or authority during regular business hours,.

SECTION 19C. Section 22D of Chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is amended by striking out in line 25 the figure ‘2028’ and inserting in place thereof the following figure:- 2030.

SECTION 20. Chapter 182 of the acts of 2008 is hereby amended by striking out section 111 and inserting in place thereof the following section:-

Section 111. There is hereby established a special commission to study the Massachusetts contributory retirement systems. The commission shall consist of 17 members: 1 of whom shall be the secretary of administration and finance, or her designee; 1 of whom shall be the auditor of the commonwealth, or his designee; 1 of whom shall be the executive director of the public employee retirement administration commission, or his designee; 1 of whom shall be the executive director of the state retirement board, or his designee; 1 of whom shall be the executive director of the teachers’ retirement board, or her designee; 3 of whom shall be members of the house of representatives, 2 of whom shall be appointed by the speaker of the house and 1 of whom shall be appointed by the house minority leader; 3 of whom shall be members of the senate, 2 of whom shall be appointed by the senate president and 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting no later than June 1, 2009.

181 The commission shall make a comprehensive study of the Massachusetts
182 contributory retirement systems. The study shall include, but shall not be limited to:
183 contribution rates paid by employers and employees; vesting periods; the weight given to
184 age versus years of service in the current system; the portability of benefits in the current
185 system; the definition of regular compensation including, but not limited to, whether all
186 forms of compensation taxable under the federal income tax code should constitute
187 regular compensation; cost-of-living-adjustments with special attention paid to the cost of
188 increasing the cost-of-living-adjustments base and the cost of any recommendations the
189 commission may make; current and future employee pension plans and contribution
190 structures; termination allowances pursuant to section 10 of chapter 32 of the General
191 Laws; group classification systems; capping annual pension benefits; penalties for
192 pension fraud; eligibility and level of benefits for employees who participate under 2 or
193 more retirement systems; potential costs, savings or benefits related to moving from a
194 defined benefit retirement system to a defined contribution retirement system for new
195 employees, including a system that maintains eligibility for employees to participate in
196 the social security system; and qualifications for credit for service pursuant to section 4 of
197 said chapter 32, including minimum compensation limits for officials to be eligible for
198 credit for service.

199 The public employee retirement administration commission shall conduct an
200 actuarial analysis to determine the costs of any recommendations made by the
201 commission. The commission shall file a report of its study together with the actuarial
202 analysis and recommendations for legislation, if any, with the clerks of the house and
203 senate, the chairs of the house and senate committee on ways and means and the chairs of
204 the joint committee on public service no later than September 1, 2009.

205 SECTION 21. Notwithstanding any general or special law to the contrary, the
206 Massachusetts Bay Transportation Authority or any successor, shall enter into an
207 agreement to establish or amend existing retirement or pension benefits only if any
208 employee hired after the effective date of the agreement or amendment may not receive a
209 retirement or pension benefit prior to the completion of 25 years of credited pension
210 service and attained 55 years of age. The Massachusetts Bay Transportation Authority is
211 not prohibited by this section from permitting retirement prior to attaining age 55,
212 provided however, that either: (i) the employee is entitled to a disability pension under
213 the Massachusetts bay transportation authority retirement system; or (ii) the employee
214 has earned the maximum percentage allowed under the retirement formula of the
215 Massachusetts bay transportation authority retirement system and that the employee
216 waives the ability to collect a pension and retirement benefit due until attaining age 55.

217 SECTION 22. Section 25 of chapter 32 of the General Laws shall apply to this
218 act.

219 SECTION 22A. Section 1 of this act shall take effect July 1, 2009.

220 SECTION 22B. Section 5 of this act shall take effect July 1, 2010 and shall apply
221 to any state, county or municipal employee first employed or elected after July 1, 2010.

NO SECTION 23.

SECTION 24. Notwithstanding any general or special law to the contrary, the Massachusetts Bay Transportation Authority or any successor authority, shall enter into an agreement to establish or amend existing retirement or pension benefits only if any employee hired after the effective date of the agreement or amendment may not receive a retirement or pension benefit prior to the completion of 25 years of credited pension service and attained 55 years of age. The Massachusetts Bay Transportation Authority is not prohibited by this section from permitting retirement prior to attaining age 55, provided however, that either: (i) the employee is entitled to a disability pension under the Massachusetts Bay Transportation Authority retirement system; or (ii) the employee has earned the maximum percentage allowed under the retirement formula of the Massachusetts Bay Transportation Authority retirement system and that the employee waives the ability to collect a pension and retirement benefit due until attaining age 55.

SECTION 25. Section 42(b) of said chapter 32 of the General Laws is hereby amended by adding the following language to the end of said section:- Notwithstanding the above-language, any city or town that makes use of a reserve list may decline this section by an affirmative vote by the local governing agency, assented to by the appointing authority as defined by M.G.L. c. 31, Section 1 and effective the date said vote and assent is formally submitted to the Civil Service Commission.

SECTION 26. Section 28M of Chapter 32 of the General Laws is hereby amended by striking out the first sentence and inserting in place thereof the following new sentence:-

Notwithstanding the provisions of sections one to twenty-eight, inclusive, any employee of the department of correction, classified under Group 4, whose major responsibilities include the care and custody of prisoners, and any transportation officer working within the department of correction, who has performed services in the department of correction for not less than twenty years, provided, the majority of years of service was performed within one or more titles in Group 4, shall, at his own request, be retired by said retirement board.